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IN THE

Supreme Court of the United States

October Term, 1963

No. 905

STEVE E. ANTHONY,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable William O. Douglas, Associate Justice of the Supreme Court of the United States:

Respondent prays that the Petition for Writ of Certiorari heretofore filed with this court shall be denied.

Preliminary Statement.

The intemperate and inaccurate language used in portions of petitioner's Petition and Brief (particularly at p. 3) are neither appropriately used by nor fitting for an attorney admitted to practice before this Honorable Court. The vituperative words and villification used are typical of the makeweight which petitioner has used throughout his case to disguise the total lack of merit to his contentions.

Statement of the Case.

On January 9, 1962, the Board of Supervisors, County of Los Angeles, unanimously (Supervisor Chase being absent) adopted a resolution finding and determining that the public interest and necessity require the acquisition by the County of Los Angeles of the fee simple title in and to petitioner's real property for a public use, to wit: Hollywood Motion Picture and Television Museum Site.

On January 19, 1962, respondent filed an action in eminent domain to acquire petitioner's real property, among others, as directed by the Board of Supervisors.

By First Amended Answer dated on or about April 10, 1962, petitioner raised the issue as to whether or not the Hollywood Motion Picture and Television Museum is a public use.

A Pre-Trial Conference was held in Department 2 of the Superior Court, County of Los Angeles, on November 19, 1962. At that time the Joint Pre-Trial Statements of each party were incorporated in the Pre-Trial Order, which was issued by the court. Paul Hill, counsel for petitioner, signed a Joint Pre-Trial Statement which stated in part, under the heading, "Matters Agreed Upon":

> "6. That the issue of public use and necessity is a matter of law to be tried by the court, and that no evidence on this issue shall be taken or heard before the jury." [Clk. T., p. 18.]

The matter came on for trial before the Honorable Aubrey N. Irwin, Judge presiding in Department 55 of the Superior Court, on January 30, 1963, and continued thereafter for a four-day period, with the jury rendering its verdict on February 4, 1963. All evidence received at said trial was applicable only to petitioner's undivided one-half interest in the subject property. Respondent herein had purchased, through negotiation, the other one-half interest from the owner thereof. It is significant to note that petitioner is not the owner of the full fee title to the subject property. The owner of the other undivided one-half interest in the subject property agreed that the Hollywood Motion Picture and Television Museum is a public use.

On the first day of trial before a jury was impaneled, respondent offered into evidence a certified copy of the resolution of public use and necessity referred to above. [Rep. Tr. p. 11.] Respondent directed the trial court's attention to California Government Code Sections 25351.3 and 25351.4. [Rep. Tr. p. 8.] (Appendices A & B.) Respondent then rested on the issue of public use. Petitioner was then given an opportunity to introduce evidence on the public use issue. No evidence was introduced or offered by petitioner at that time. Only the statements of counsel for petitioner were offered. The court then found, as a matter of law, that the Hollywood Motion Picture and Television Museum is a public use.

After the jury had been impaneled and sworn and on the second day of trial on the issue of just compensation, petitioner attempted to introduce evidence in the presence of the jury on the issue of public use. Respondent objected to the introduction of this evidence before the jury, and the court asked counsel for the petitioner to make an offer of proof. [Rep. Tr. p. 71.] Counsel for petitioner made the following offer of proof:

> "The Court: What evidence do you intend to produce by this witness, Mr. Hill?
>
> Mr. Hill: He is assistant treasurer. I want to read it because I don't want to make any mistake. He is assistant treasurer of the Hollywood Museum Association which has entered into an agreement with the County of Los Angeles.
>
> The Court: They have what?
>
> Mr. Hill: They have entered into agreements with the County of Los Angeles whereby they are having a separate independent leasing corporation, leasing out prospective space in this so-called museum.
>
> "They are also engaging building contractors for the purpose of erecting this building upon this County ground, and it is my intent and purpose to prove that the Hollywood Museum is merely a front of some kind under the guise of eminent domain and under the guise of a public body to put up a private enterprise to be used for the next 30 years, and this separate income is to go into these various corporations that are going to build this building, run this museum, run the restaurant, and run other concessions within the building for a profit which the County does not participate in." [Rep. Tr. p. 72.]

Respondent's objection to this offer of proof and to any evidence pursuant thereto was sustained by the court. The trial then continued on the issue of just compensation, and the jury rendered its verdict as to the fair market value of petitioner's undivided one-half interest in the subject property.

Petitioner made a motion for a new trial and said motion was denied on March 22, 1963. [Clk. Tr. pp. 22-24.] Petitioner duly filed Notice of Appeal, and appeal was taken on the record to the California District Court of Appeal. [Clk. Tr. p. 25.] Petitioner also petitioned said District Court of Appeal for a Writ of Supersedeas to stay the Order of the trial court granting respondent immediate possession to petitioner's real property. Said Order of Immediate Possession was issued on June 19, 1963, after respondent had complied with applicable California law requiring said respondent to make a deposit in court securing the interests of petitioner pending the appeal. By an Opinion filed January 14, 1964, the California District Court of Appeal, Second Appellate District, affirmed the judgment of the trial court and denied petitioner's Petition for Writ of Supersedeas.

County of L.A. v. Anthony, 224 A. C. A. 118.

On or about February 14, 1964, petitioner petitioned for hearing in the Supreme Court of the State of California and further petitioned for a writ staying the aforementioned Order of Immediate Possession. On February 26, 1964, the Supreme Court of the State of California filed its Order denying petitioner's petition for hearing in that court and further denied petitioner's application for a Writ of Supersedeas.

Petitioner has now petitioned the Supreme Court of the United States for a Writ of Certiorari. Respondent respectfully submits that petitioner's petition for a Writ of Certiorari should be denied.

Questions Presented.

The Petition for Writ of Certiorari seems to present the following questions:

1. Is a motion picture and television museum a public use?
2. Was it necessary to acquire the particular property involved for this project?
3. Is the operation of the public use a proper issue in the eminent domain proceedings?

Discussion.

Petitioner Has Failed to Raise a Substantial Constitutional Issue for Determination by This Court.

The issues which petitioner has raised have been previously determined in respondent's favor by this court and by the appellate courts of the State of California.

Conclusion.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

HAROLD W. KENNEDY,
County Counsel, and
THOMAS W. STOEVER,
Deputy County Counsel,

By THOMAS W. STOEVER,
Attorneys for Respondent.

IN THE

Supreme Court of the United States

October Term, 1963

No. 905

STEVE E. ANTHONY,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

RESPONDENT'S BRIEF

I.

The California Legislature Has Determined That a Motion Picture and Television Museum Is a Public Use.

California Government Code, Sections 25351.3 and 25351.4.

II.

In the First Instance It Is for the Legislature to Determine Whether the Use for Which Property May Be Taken Is a Public Use.

In *Berman v. Parker*, 348 U. S. 26, 99 L. Ed. 27, it was held that:

"Subject to specific constitutional limitations, when the legislature has spoken, the public interest

has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation; whether it be Congress * * * or the States legislating concerning local affairs. See *Olsen v. Nebraska*, 313 US 236, 85 L ed 1305, 61 S Ct 862, 133 ALR 1500; *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 US 525, 93 L ed 212, 69 S Ct 251, 6 ALR 2d 473; *California State Auto. Asso. v. Maloney*, 341 US 105, 95 L ed 788, 71 S Ct 601. This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. See *Old Dominion Land Co. v. United States*, 269 US 55, 66, 70 L ed 162, 165, 46 S Ct 39; *United States ex rel. Tennessee Valley Authority v. Welch*, 327 US 546, 90 L ed 843, 848, 66 S Ct 715." See also *United States v. Certain Parcels of Land*, 161 F. Supp. 560.

When the question of public use is reviewed by the court, a legislative declaration is of great persuasive force, and is entitled to great weight unless erroneous and without foundation.

Housing Authority v. Forbes, 51 Cal. App. 2d 1;
City of Pasadena v. Stimson, 91 Cal. 238;
Kern County etc. v. McDonald, 180 Cal. 7;
Kleiber v. San Francisco, 18 Cal. 2d 718;
Tuolumne Water Co. v. Frederick, 83 Cal. App. 498.

The California District Court of Appeal properly held:

> "In this case the legislative determination that a motion picture and television museum is for public uses and purposes; not being unreasonable, is binding and conclusive on this court."
>
> *County of L. A. v. Anthony*, 224 A. C. A. 118, 121.

It is obvious from petitioner's petition that he is not an admirer of the motion picture and television performing arts. The fact that petitioner disapproves thereof does not overcome the fact that said motion picture and television performing arts have been a source of education, entertainment and recreation for literally millions of people throughout the world, the United States and the State of California itself. Notwithstanding petitioner's protestations to the contrary, the motion pictures and, more recently, television have played an important role in the historic and economic growth of the State of California.

While respondent has cited several "redevelopment agency" cases in support of its position, it is respectfully submitted that a museum which is *prima facie* for the education, entertainment and recreation of the public is as much a matter of public welfare as is the clearance and redevelopment of blighted urban areas.

III.

Petitioner Was Not Improperly Restricted in Offering Evidence on the Public Use Issue Before the Jury.

Petitioner offered no evidence whatsoever on the public use issue prior to the impaneling of a jury. [Rep. Tr. pp. 1-12.] After the court had ruled on the public use issue, and after one full day of trial on the issue of fair market value, petitioner attempted to call a witness and to take testimony on the public use issue *in the presence of the jury.* [Rep. Tr. pp. 70-73.] The only issue to be determined by the jury is the fair market value of the subject property; all other matters, including public use, are to be determined by the court.

Laguna Salada, etc. District v. Pacific Dev. Co., 119 Cal. App. 2d 470, 475;

People v. Ricciardi, 23 Cal. 2d 390.

Petitioner agreed in the Joint Pre-Trial Statement, *i.e.*, Stipulated:

> "6. That the issue of public use and necessity is a matter of law to be tried by the court and that no evidence on this issue shall be taken or heard before the jury." [Clk. Tr. pp. 15-19, 18.]

IV.

The Necessity for Taking Petitioner's Property Is Not a Justiciable Issue.

Once the question of the public purpose has been decided, the necessity for the taking of a particular property rests in the discretion of the legislature.

Berman v. Parker, 348 U. S. 26, 99 L. Ed. 27.

United States v. 342.81 Acres of Land, 134 F. Supp. 430.

The Board of Supervisors, County of Los Angeles, State of California, unanimously adopted a resolution determining that the public necessity required the acquisition of petitioner's property.

California Code of Civil Procedure, Section 1241(2) states that:

> "When * * * the legislative body of a county * * * shall by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, * * * by such county, * * * and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence: (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor. * * *".

People v. Chevalier, 52 Cal. 2d 299.

The *Chevalier* case further holds that the question of necessity for making a particular public improvement is not a justiciable issue.

V.

Petitioner Was Not Improperly Restricted in Presenting Evidence as to the Subsequent Operation of the Museum.

It is obvious from the offer of proof made by counsel for petitioner [Rep. Tr. pp. 71-72] that his primary concern is not 'the museum' as a public use, but the manner in which said museum will be operated once it is established. It was held in *Berman v. Parker*, 348 U. S. 26, 99 L. Ed. 27, that the "public use" character of an acquisition would not be defeated by the subsequent reconveyance of the acquired property to private parties. It is not true, as alleged by petitioner, that the museum will be placed in the hands of private interests for operation. It was held in *Housing Authority v. Forbes*, 51 Cal. App. 2d 1, 9:

> "(4) The appellants express the fear that their property may be taken for one purpose and thereafter used for another. There is a ready answer to this. There is a presumption, well recognized by the cases, that public officers will carry out their functions and exercise their powers in accordance with the law. *People v. Globe Grain & Milling Co.*, 211 Cal. 121, 128 (294 Pac. 3); *Ellis Landing & Dock Co. v. City of Richmond*, 70 Cal. App. 720, 723 (234 Pac. 336)."

Appellant's Petition for Hearing by the California Supreme Court was denied in the *Forbes* case.

The trial court herein, as affirmed by the District Court of Appeal, properly held that if the museum was transferred into a private use, vis-a-vis, a public use, petitioner's remedy would be in a later suit as a taxpayer.

VI.

Petitioner Has Failed to Cite Any Cases Which Support His Contentions.

Petitioner's Brief fails to cite any Federal or State authorities which support the positions he has taken. It is significant that petitioner has wholly avoided citation of California authority. There is a simple reason for petitioner's failure to cite California authority: California law as applied to these facts is contrary to petitioner's position.

The New York authorities cited by petitioner are based upon specific local statutes. The Federal authorities cited by petitioner tend more to support the position of respondent than the contentions of petitioner.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

HAROLD W. KENNEDY,
County Counsel, and
THOMAS W. STOEVER,
Deputy County Counsel,
Attorneys for Respondent.

APPENDIX A.

California Government Code §25351.3.

§ 25351.3. RIGHT OF BOARD TO CONSTRUCT, REPAIR ETC., BUILDINGS AND OTHER FACILITIES. In addition to its other powers and duties the board may:

(a) Acquire land for and construct, lease, sublease, build, furnish, refurnish or repair buildings for convention and exhibition halls, trade and industrial centers, auditoriums, opera houses, music halls and centers, motion picture and television museums, and related facilities as places of public assembly for the use, benefit and enjoyment of the public, including off-street parking places for motor vehicles, ways of ingress and egress and such other facilities and improvements as are necessary or convenient for their use.

(b) Acquire land and construct such buildings, structures and facilities thereon in whole or in part, with county funds or it may, by contract or lease with any nonprofit association or corporation, provide for the acquisition of land or the construction of such buildings, structures and facilities, or all or any part thereof, for such public purposes, upon such terms as the board may determine.

(c) Lease, pursuant to Section 25371 of this code, any real property owned by the county and available for such public purposes to any person, firm, corporation or nonprofit association or corporation for such purposes, or any thereof, such person, firm, corporation or nonprofit association or corporation to lease the real property as improved back to the county for use for the purposes stated in the lease. Any lease authorized by

the board under this subdivision (c) shall be awarded to the lowest responsible bidder after public competitive bidding conducted in the manner determined by the board. Notice inviting bids shall be published pursuant to Section 6066 of this code in such newspaper as the board may direct.

(d) Enter into a lease or sublease, without advertising for bids therefor, of such buildings, structures and facilities or any thereof with any nonprofit association or corporation which agrees to use the buildings, structures and facilities so leased to it for the public purposes for which the same were or are to be built; or contract, without advertising for bids therefor, with any nonprofit association or corporation for the maintenance, operation and management, or any thereof, of such buildings, structures and facilities or any part thereof, including the scheduling and promotion of events therein, for a specified term, not to exceed forty (40) years, upon such terms and conditions as may be agreed upon. Such leases, subleases or contracts shall provide that at least annually there shall be paid to the county the net revenue, if any, from the operation and use of the facilities, remaining after the payment of expenses and costs, if any, for maintenance, operation or management, interest and principal payments upon loans to the nonprofit corporation or association for purposes of maintenance, operation or management, and any other expenses, and after providing maintenance and operation reserves. Such lease, sublease, or contract shall also provide that upon its expiration, all of

the assets of the nonprofit association or corporation after payment or discharge of its indebtedness and liabilities shall be transferred to the county.

(e) If the county has a population in excess of 4,000,000, without advertising for bids therefor, grant any real property owned by the county, or lease, for a term not to exceed ninety-nine (99) years, any real property owned by the county, to any city, district or other public corporation for any of the above public uses, without consideration except the agreement of grantee or lessee to use said real property for the public uses specified, and upon such terms and conditions as may be agreed upon by the board and the grantee or lessee.

APPENDIX B.

California Government Code §25351.4.

§25351.4. SAME: "MOTION PICTURE AND TELEVISION MUSEUMS." As used in Section 25351.3, the term "motion picture and television museums" means a museum which includes, but is not limited to, any one or more of the following facilities:

(a) Completely equipped sound stages suitable for demonstrating to the public the actual filming of motion picture or television sequences;

(b) Theater facilities suitable for public showings of motion picture and television films of historical or educational interest;

(c) Film archives and related facilities for the physical preservation of motion picture and television films;

(d) Restaurant and refreshment facilities for the museum staff and the visiting public;

(e) Office facilities which may be rented as general offices to one or more nonprofit corporations which serve the interests of the motion picture or television industries as a whole.

APPENDIX C.

California Code of Civil Procedure §1241(2).

§1241. (2). FACTS NECESSARY FOR CONDEMNATION. Before property can be taken, it must appear:

That the taking is necessary to such use; provided, when the board of a sanitary district or the board of directors of an irrigation district, of a transit district, of a rapid transit district, of a public utility district, of a county sanitation district, or of a water district or the legislative body of a county, city and county, or an incorporated city or town, or the governing board of a school district, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town, or school district, or sanitary, irrigation, transit, rapid transit, public utility, county sanitation, or water district, of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence: (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury; pro-

vided, that said resolution or ordinance shall not be such conclusive evidence in the case of the taking by any county, city and county, or incorporated city or town, or school district, or sanitary, irrigation, transit, rapid transit, public utility, county sanitation, or water district, of property located outside of the territorial limits thereof.